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99  
SEAL  
BY COURT ORDER

FILED  
08 JUL 15 PM 3:48  
RICHARD W. WIEKING  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ORIGINAL

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

WHA

UNITED STATES, *ex rel.*,  
BONNIE LAMMERS, M.D.,

Plaintiffs

v.

MICHAEL HEBRARD, M.D.,  
RICHARD LAVIGNA, D.P.M.,  
FARIDEH HEIDARPOUR, ALI  
HEIDARPOUR, ADVANCED  
PHYSICAL MEDICINE & REHAB  
GROUP, INC., ADVANCED  
OCCUPATIONAL  
REHABILITATION, INC.,  
ADVANCED MEDICINE AND  
REHABILITATION OF TEXAS, INC.,  
ADVANCED MEDICINE AND  
REHABILITATION OF TEXAS, P.A.,

Defendants

CASE NO.  
CV 08

3411

COMPLAINT FOR VIOLATIONS OF  
FALSE CLAIMS ACT 31 U.S.C. §3730;

FILED UNDER SEAL PURSUANT TO  
31 U.S.C. §§ 3730(b)(2) and (3)

COMES NOW *QUI TAM* RELATOR-PLAINTIFF Bonnie Lammers, M.D.,

suing for herself and for the United States of America, and alleges as follows:

1. This action alleges the defendants systematically defrauded the United States through its Office of Workers Compensation Programs, federal employee

1 healthcare programs and the Medicare program, by making false claims, and causing false  
2 claims to be made, through 1) falsely billing for invasive EMG's as part of EMG/NCV  
3 studies, when only an NCV was performed, 2) falsely billing for unreasonable and  
4 unnecessary EMG/NCV studies, 3) falsely billing for multiple unreasonable and  
5 unnecessary Functional Capacity Evaluations, 4) falsely billing for unreasonable and  
6 unnecessary non-invasive vascular studies, 5) falsely billing for unreasonable and  
7 unnecessary use of narcotics and other pain treatments and 6) falsely billing for  
8 unreasonable and unnecessary orthotics.  
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### 11 **I. JURISDICTION**

12 2. Jurisdiction over the federal claims asserted herein is based upon federal  
13 subject matter pursuant to 31 U.S.C. § 3729 *et seq.*

14 3. The Court may exercise personal jurisdiction over the defendants pursuant  
15 to 31 U.S.C. § 3732(a).  
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### 17 **II. VENUE**

18 4. Venue is proper in the Northern District of California, under 31 U.S.C. §  
19 3732 and 28 U.S.C. §§ 1391(b) and (c) because the defendants transact business in this  
20 District and because the defendants committed acts within this district that violated 31  
21 U.S.C. § 3729.  
22

### 23 **III. PARTIES**

24 5. *Qui tam* plaintiff Bonnie Lammers, M.D., is a licensed physician and a  
25 board certified internist. Dr. Lammers provided contract physician services in the  
26 defendants' Dallas, Texas clinic, Advanced Medicine and Rehabilitation of Texas, Inc., in  
27 April and May 2008, when she became aware of the defendants' false billings and  
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1 complained internally to management. Shortly after complaining to management, Dr.  
2 Lammers' contract services were terminated. Dr. Lammers is a resident and citizen of the  
3 United States, residing in Texas.

4         6. Defendant Michael Hebrard, M.D. is a California physician, who is also  
5 applying for his Texas medical license. Dr. Hebrard is an owner and director of  
6 defendants Advanced Physical Medicine & Rehab Group, Inc., Advanced Occupational  
7 Rehabilitation, Inc., and Advanced Medicine and Rehabilitation of Texas, Inc., and is a  
8 principal in Advanced Medicine and Rehabilitation of Texas, P.A. Dr. Hebrard has  
9 participated in carrying out the fraud schemes alleged herein for at least the past 10 years.  
10 At all relevant times, Dr. Hebrard directed the participation of the corporate and  
11 professional association defendants in the fraud schemes alleged herein. Dr. Hebrard  
12 resides in the Northern District of California.  
13

14         7. Richard LaVigna, D.P.M. is a California doctor of podiatric medicine, who  
15 is also applying for his Texas podiatry license. Dr. LaVigna is an owner and director of  
16 defendants Advanced Physical Medicine & Rehab Group, Inc., Advanced Occupational  
17 Rehabilitation, Inc., and Advanced Medicine and Rehabilitation of Texas, Inc., and is a  
18 principal in Advanced Medicine and Rehabilitation of Texas, P.A. Dr. LaVigna has  
19 participated in carrying out the fraud schemes alleged herein for at least the past 10 years.  
20 At all relevant times, Dr. LaVigna directed the participation of the corporate and  
21 professional association defendants in the fraud schemes alleged herein. Dr. LaVigna  
22 resides in the Northern District of California.  
23

24         8. Farideh Heidarpour (also known as Fariday Heidarpour) is an individual  
25 residing in the Northern District of California, but also has homes in Oklahoma and  
26 Texas. Ms. Heidarpour is an expert in the coding and billing details of the Federal  
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1 worker compensation system, who helped devise the fraudulent billing practices alleged  
2 herein. Ms. Heidarpour has participated in carrying out the fraud schemes alleged herein  
3 for at least the past 10 years. Ms. Heidarpour is a financial principal in, and a director of,  
4 defendants Advanced Physical Medicine & Rehab Group, Inc., Advanced Occupational  
5 Rehabilitation, Inc., and Advanced Medicine and Rehabilitation of Texas, Inc. At all  
6 relevant times, Ms. Heidarpour directed the participation of the corporate defendants in  
7 the fraud schemes alleged herein.  
8

9       9. Ali Heidarpour is an individual residing in the Northern District of  
10 California, but has also homes in Oklahoma and Texas. Mr. Heidarpour works in  
11 conjunction with his mother, defendant Farideh Heidarpour, and with defendants Dr.  
12 Hebrard and Dr. LaVigna to carry out the fraudulent billing schemes alleged herein.  
13

14       10. Advanced Physical Medicine & Rehab Group, Inc. ("Advanced Rehab  
15 CA") is a California corporation, headquartered in the Northern District of California.  
16 Advanced Rehab CA is owned and run by defendants Michael Hebrard, M.D., Richard  
17 LaVigna, D.P.M. and Farideh Heidarpour.

18       11. Advanced Occupational Rehabilitation, Inc. ("Advanced Rehab OK") is an  
19 Oklahoma corporation. Advanced Rehab OK is owned and run by defendants Michael  
20 Hebrard, M.D., Richard LaVigna, D.P.M. and Farideh Heidarpour.  
21

22       12. Advanced Medicine and Rehabilitation of Texas, Inc. ("Advanced Rehab  
23 TX") is a Texas corporation, headquartered in Dallas, Texas. Advanced Rehab TX is  
24 owned and controlled by defendants Michael Hebrard, M.D., Richard LaVigna, D.P.M.  
25 and Farideh Heidarpour.

26       13. Advanced Medicine and Rehabilitation of Texas, P.A. ("Advanced Rehab  
27 P.A.") is a Professional Association, headquartered in Dallas, Texas. Advanced Rehab  
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1 P.A. is owned and controlled by defendants Michael Hebrard, M.D., Richard LaVigna,  
2 D.P.M.

3 14. Plaintiff is informed and believes, and thereon alleges, that Defendants, and  
4 each and all of them, at all relevant times hereinafter mentioned were the agents,  
5 employees, servants, joint venturers, parent companies, successor companies directors,  
6 fiduciaries, representatives, and/or co-conspirators of each of the remaining defendants.  
7 Defendants, in doing the things hereinafter alleged, were acting within the course and  
8 scope of such relationship and were responsible for the occurrences herein alleged.  
9

#### 10 **IV. BACKGROUND**

11 15. The United States, through its Office of Workers Compensation Programs,  
12 pays enrolled providers to treat injured federal employees. In addition, other federal  
13 employee healthcare programs are federally funded and designed to provide healthcare to  
14 federal employees and their families. The Medicare program is a federally funded  
15 healthcare program designed to provide healthcare primarily for the aged.  
16

17 16. Not surprisingly, in order to prevent waste, fraud and abuse, these Federal  
18 healthcare programs have explicit restrictions on what may, and may not, be covered and  
19 the reimbursement rates for coverage. One of those requirements is that the medical  
20 treatment must be medically reasonable and necessary. Medicare providers have a legal  
21 duty to familiarize themselves with Medicare's coverage and reimbursement rules,  
22 including those stated in the Medicare Manuals. Heckler v. Community Health Services  
23 of Crawford County, Inc., 467 U.S. 51, 64-65 (1984). A provider's failure to inform  
24 itself of the legal requirements for participation in the program acts in reckless disregard  
25 or deliberate ignorance of those requirements, either of which is sufficient to charge it  
26 with knowledge of the falsity of the claims or certifications in question, under the False  
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1 Claims Act. *United States v. Mackby*, 261 F.3d 821, 828 (9<sup>th</sup> Cir. 2001). These duties  
2 also apply to providers who provide healthcare services through the Office of Workers  
3 Compensation Programs and other Federal Employee healthcare programs.

#### 4 **V. DEFENDANTS' MISCONDUCT**

5 17. The Defendants run clinics that are simply "worker compensation mills"  
6 and falsely bill for needless tests and non-existent reading of those tests. The Defendants  
7 have engaged in at least six schemes to defraud the federal healthcare programs  
8 mentioned above, especially in the treatment of injured federal workers in the programs  
9 administered through the Office of Workers Compensation, by 1) falsely billing for  
10 invasive EMG's as part of EMG/NCV studies, when only an NCV was performed, 2)  
11 falsely billing for unreasonable and unnecessary EMG/NCV studies, 3) falsely billing for  
12 multiple unreasonable and unnecessary Functional Capacity Evaluations, 4) falsely billing  
13 for unreasonable and unnecessary non-invasive vascular studies, 5) falsely billing for  
14 unreasonable and unnecessary use of narcotics and other pain treatments and 6) falsely  
15 billing for unreasonable and unnecessary orthotics. Finally, the patients are told by  
16 defendants that it is guaranteed the patients will receive money if they go through the full  
17 regimen of testing and evaluations, and the patients are "coached" on how to respond to  
18 physician inquiries in the evaluation of their injuries.

19 18. In fact, defendant/owner Farideh Heidarpour (who is not physician) has a  
20 pre-written diagnosis for every new patient and a list of needless tests that are always  
21 scheduled for each patient's first day in the clinic. These tests often take place before the  
22 patient is seen by any physician. Ms. Heidarpour also has a pre-written list of tests to be  
23 performed on each patient at a later point in their treatment. Ms. Heidarpour even has a  
24 script the physicians are ordered to follow, which includes the ordering of all of these  
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1 tests. When qui tam plaintiff Bonnie Lammers, M.D. refused to order these batteries of  
2 needless tests, she was rebuked by the defendants and later learned the tests had already  
3 been performed. The defendants went so far as to change Dr. Lammers' dictated notes on  
4 patients so that the records falsely reflected that Dr. Lammers had ordered the defendants'  
5 complete series of tests on each patient. Defendants even had a stamp of Dr. Lammers'  
6 signature that they would falsely place on patient records to make it appear that Dr.  
7 Lammers had ordered a full battery of tests and treatments. These tests and treatment  
8 plans are discussed below.

10 19. Billing invasive EMGs when none are performed. Electromyography  
11 ("EMG") is a test to record electrical activity in muscle tissue, and is performed by  
12 inserting needles into the muscle to record the electrical activity. EMG testing is used to  
13 distinguish nerve impairment (neuropathy) from muscle disease (myopathy). Nerve  
14 conduction velocity ("NCV") is a test to record the speed at which impulses travel  
15 through nerves and measure electrical responses. Whereas EMG is an invasive test with  
16 needles, NCV is not. For the NCV, two electrode patches are placed on the skin in a  
17 specific location. NCV is not a test to distinguish nerve impairment from muscle disease,  
18 and is of no diagnostic value in that determination. The surface electrode patches used in  
19 NCVs simply pick up the electrical signal as it travels along the nerve in that area.  
20 Despite only performing NCVs, the defendants have a standard practice of billing for  
21 EMGs and for a combination of EMGs and NCVs when only the surface NCV study is  
22 performed.  
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25 20. Billing for multiple unnecessary EMG/NCV studies. In addition to falsely  
26 billing for EMGs when none are performed, the defendants also have a standard practice  
27 of billing for EMG and NCV studies on every patient that walks in the door, as well as for  
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1 physician readings of each of these tests. The reading of these tests require interpretation  
2 by a specially trained physician, which defendants did not have in their employee. Based  
3 on information and belief, these tests were never actually read and used in the diagnosis  
4 and treatment of patient. Additionally, by billing for these tests on every patient, many of  
5 these tests are not medically reasonable and necessary for the particular patients. Some of  
6 the billing codes that are misused by defendants are:

7  
8 95903 Motor Nerve Conduction Study  
9 95904 Sensory Nerve Conduction Study  
10 95861 EMG for two limbs  
11 95900 EMG/NCV - Motor  
12 95904 EMG/NCV - Sensory

13       21. Billing for multiple unnecessary Functional Capacity Evaluations. The  
14 Functional Capacity Evaluation ("FCE") is a test performed by an Occupational  
15 Therapist. The injured body part is tested by asking the patient to perform tasks of  
16 various difficulties that stress that body part, and the patient's ability to perform these  
17 tasks is measured and recorded. Most worker's compensation patients in state worker's  
18 compensation systems never receive an FCE evaluation, as this test is appropriate in only  
19 some instances for some patients at the end of their treatment to determine the patient's  
20 functional ability to return to work.  
21

22       22. However, it is the defendants' standard practice to perform FCEs not only  
23 on every patient, but *multiple times* on every patient. They perform these FCEs even on  
24 patients that have a history of chest pain and diabetes, without ever clearing the patient  
25 for these tests through a cardiologist. When Dr. Lammers tried to postpone the FCEs  
26 until a patient with these symptoms could see a cardiologist, the defendants refused to  
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1 postpone the tests. This use of FCEs is far outside of every guideline on the topic and  
2 results in falsely billing for FCEs that are not medically reasonable and necessary.

3       23. Billing for unnecessary non-invasive vascular studies. Non-Invasive  
4 Vascular Studies utilize doppler/ultrasound to measure bloodflow going through blood  
5 vessels of the extremities and record the results in a form that looks much like an EKG.  
6 The defendants perform these studies needlessly on patients with no symptoms that call  
7 for these tests to be done. Additionally, the defendants perform these studies on patients  
8 with contraindications that should prevent them from proceeding with the test.  
9 (Pregnancy, peripheral edema, signs of vascular insufficiency.) These tests are performed  
10 on every patient by poorly trained technicians and are not being interpreted by anyone,  
11 although the defendants falsely bill as though they are. This use of non-invasive vascular  
12 studies is far outside of every medical standard and it results in falsely billing for non-  
13 invasive vascular studies that are not medically reasonable and necessary.

14       24. Billing for unnecessary narcotics and pain treatments. Another scheme of  
15 the defendants is to send every patient for "pain management." Almost without  
16 exception, each patient receives three medications for pain. On information and belief, at  
17 least one or two of the medications are narcotics, such as hydrocodone. Generally,  
18 narcotics are given short-term after a surgical procedure or an injury. However, under the  
19 defendants' treatment scheme, patients are prescribed narcotics for everything including  
20 carpal tunnel syndrome and heel spurs. This abuse of narcotics for long - term conditions  
21 recklessly exposes patients to health risks including narcotic addiction. The defendants'  
22 billings to the federal programs are knowingly false because they are not for medically  
23 reasonable and necessary narcotics use.

24       25. Billing for unreasonable and unnecessary orthotics. For every patient with  
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1 a complaint below the waist, the defendants fit the patient for orthotics. By fitting each of  
 2 these patients for orthotics, the prescription for many of these orthotics are not medically  
 3 reasonable and necessary for the particular patients.

4 26. Promising money and coaching patients to respond to physician inquiries.

5 Finally, patients are “coached” by the defendants to exaggerate their pain and injuries,  
 6 with the purpose of prolonging treatment and testing, and receiving disability awards. In  
 7 this process, patients are told by defendants that the patients are “guaranteed” to receive  
 8 money if they will go through the full regimen of studies and treatments.  
 9

10 **VI. COUNT ONE**

11 **(For Violation of 31 U.S.C. § 3729 et seq.)**

12 27. *Qui tam* plaintiff hereby realleges and incorporates herein by this reference  
 13 paragraphs 1 through 26, inclusive, hereinabove, as though fully set forth at length.

14 28. Defendant has knowingly caused to be submitted, false claims for payment,  
 15 as set forth above, in violation of 31 U.S.C. § 3729(a)(1). Additionally, defendant has  
 16 knowingly caused to be used false records or statements to get false or fraudulent claims  
 17 paid by the United States, in violation of 31 U.S.C. § 3729(a)(2). Further, defendants  
 18 conspired to defraud the United States by getting a false or fraudulent claim allowed or  
 19 paid, in violation of 31 U.S.C. § 3729(a)(3). As a result of such knowing submission of  
 20 false claims, defendant has wrongfully caused payments to be made from, and has  
 21 wrongfully received monies derived from, the United States Treasury.  
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24 **WHEREFORE**, *qui tam* plaintiff prays for relief as follows:

25 1. Full restitution to the United States of all money damages sustained by  
 26 each, respectively;

27 2. For three times the dollar amount proven to have been wrongfully sold to,  
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1 paid by or withheld from the United States;

2 3. For maximum civil penalties for all false records, statements, certifications  
3 and claims submitted to the United States;

4 4. For costs of suit, reasonable attorney's fees and the maximum relator share;  
5 and

6 5. For such other and further relief as the Court deems just and proper.  
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8  
9 **JURY DEMAND**

10 *Qui Tam* Plaintiff hereby demands trial by jury.  
11

12 Respectfully Submitted,  
13 **WARREN ■ BENSON LAW GROUP**

14  
15 Dated: July 14, 2008

16 

17 Donald R. Warren  
18 Counsel for *qui tam* plaintiff Bonnie Lammers, M.D.  
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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is 7825 Fay Avenue, Suite 200, La Jolla, California 92037.

On July 14, 2008, I served the attached:

Complaint

[x] by placing [ ] the original [x] true copies thereof enclosed in sealed envelopes addressed as follows:

Michael Mukasey, Atty. General  
U.S. Department of Justice  
10th and Constitution  
Washington, D.C. 20530

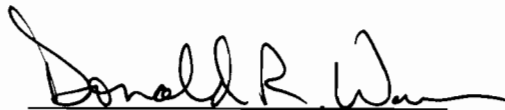
Joseph P. Russoniello, U.S. Atty.  
c/o Civil Process Clerk  
16-1111 U.S. Courthouse  
450 Golden Gate Ave.  
P.O. Box 36060  
San Francisco, CA 94102

[x] **(BY MAIL)** I place each such sealed envelope, with postage thereon fully prepaid for certified mail in the United States mail at San Diego, California.

[ ] **(BY FEDERAL EXPRESS)** I tendered each such envelope to a Federal Express courier for delivery to the addressee(s) noted above.

[x] (State or Federal) I declare, under penalty of perjury, under the laws of the State of California that the above is true and correct.

Executed on July 14, 2008, at La Jolla, California.

  
Donald R. Warren